

Fairfax County Redevelopment and Housing Authority

Administrative Regulations Concerning the Sale and Rental of

Affordable Dwelling Units

In accordance with Article 2, General Regulations, Part 8, Affordable Dwelling Unit Program, of the Fairfax County Zoning Ordinance, as amended by the Board of Supervisors on February 28, 2006



Administrative Regulations adopted by the Fairfax County Redevelopment and Housing Authority on September 26, 1991, pursuant to Article 2, General Regulations, Part 8, Affordable Dwelling Unit Program, of the Fairfax County Zoning Ordinance, and amended:

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Abbreviations Frequently Used in this Document

ADU	Affordable Dwelling Unit
DPWES	Fairfax County Department of Public Works and Environmental Services
FCRHA	Fairfax County Redevelopment and Housing Authority
HCD	Fairfax County Department of Housing and Community Development
RUP	Residential Use Permit (issued by the Fairfax County Department of Planning and Zoning)

FAIRFAX COUNTY

Fairfax County Redevelopment and Housing Authority (FCRHA) Administrative Regulations Concerning the Sale and Rental of

Affordable Dwelling Units

Section 1

Applicability

Article 2, Part 8 of the Fairfax County Zoning Ordinance, the Affordable Dwelling Unit (ADU) Program, became effective July 31, 1990 and was last amended on February 28, 2006. It applies to sites which are the subject of a rezoning or special exception application or site plan or subdivision plat submission which yield 50 or more dwelling units at an equivalent density greater than one unit per acre, provided it is above the low end of the density range specified in the adopted Comprehensive Plan, and which are located in an approved sewer service area (with exemptions as provided in Section 2-803 of the Zoning Ordinance). ADUs also may be provided in developments where these criteria are not applicable, in order to take advantage of special zoning regulations that apply to properties with ADUs. In return for an increase in density, such developments are required to provide a specified percentage of affordable units which is defined as units affordable to households whose income is 70% or less of the median income for the Washington, D.C. Metropolitan Statistical Area. (See separate regulations issued by the FCRHA concerning income limits of eligible households.) The required percentages of ADUs are set forth in Section 2-804 of the Zoning Ordinance. In all cases, ADUs should be dispersed among other units in the development.

The following regulations apply to the sale or rental of ADUs constructed in accord with the Zoning Ordinance. The Zoning Ordinance, Article 2, Part 8, the ADU Program, should be consulted in addition to these Procedures. In the event of inconsistency or conflict between these Procedures and the ADU Program in the Zoning Ordinance, the Zoning Ordinance shall prevail.

Section 2

Development of ADUs and Notification Concerning Availability of ADUs for Sale or for Rent

A. Site Plans and Subdivision Plats for Developments Which Include ADUs

Section 2-806 and 2-807 of the Zoning Ordinance require that certain information concerning ADUs be included on approved site plans, record subdivision plats and building plans for developments which include ADUs. In order to monitor the status of such developments and the number and types of ADUs to be provided, copies of each submission of site plans, plats or building plans to the Fairfax County Department of Public Works and Environmental Services (DPWES) shall be submitted to the Fairfax County Department of Housing and Community Development (HCD). Information shall be provided as described below.

1. In the case of single family detached and attached units, the number of ADUs, and the specific lots or units designated as ADUs shall be noted on site and subdivision plans and plats.
2. For multiple family condominium units, the number of ADUs and market rate units of each bedroom size, and the specific units that are to be the ADUs shall be noted on the site plan, building plans, and condominium declarations.
3. In the case of multiple family units which are under a single ownership and which constitute a rental project, ADU units need not be specifically identified. However, the number of ADUs by bedroom count to be provided and the number of market rate dwelling units by bedroom count shall be noted on the approved site plan and building plan.
4. For multiple section developments where all the required affordable dwelling units are not to be provided in the first section of the development, the site plan and/or record subdivision plat for the first section and all subsequent sections shall contain a notation identifying in which section(s) the affordable dwelling units will be or have been provided and a total of all affordable dwelling units for which such site plan(s) and/or subdivision plat(s) have been approved.

For multiple family developments, either for sale or rent, the number of ADUs of each bedroom size shall be proportional to the bedroom mix of the market rate units except that the owner may elect to provide a higher proportion of ADUs of greater bedroom count.

B. ADU Specifications and Sales Prices/Rents

In accordance with Section 2-809 of the Zoning Ordinance, units constructed as ADUs must conform to the Specifications for Prototype ADUs developed by the FCRHA and approved by the Affordable Dwelling Unit Advisory Board. Developers shall submit copies of building plans for the ADUs to HCD for its review and determination that the proposed ADUs conform to the specifications. Plans must be submitted in advance of or together with a request for approval of the proposed sales price or rent for the ADUs. The sales price or rent must be established before an Offering Agreement (Notification of Availability of ADUs) can be approved.

C. ADU Covenants

The developer of property which is subject to the provisions of the ADU Program, either for-sale or for-rent, will be provided by HCD with copies of the Declaration of Affordable Dwelling Unit Covenants (Covenants) in the form prescribed by the FCRHA that are to be recorded in the County land records. The Covenants describe both the developer's obligations under the ADU Program concerning the initial sale or rental of the ADUs and the longer term controls on the sale or rental of the ADUs which govern subsequent owners or tenants.

In a for-sale development the Covenants describe the property subject to the ADU Program requirements as well as the property on which the ADUs will be located; the controls on the initial sale of the ADUs to qualified purchasers, the FCRHA and designated non-profit groups and the long term controls on the ADUs. The Covenants must be recorded simultaneously with, and immediately following, the recordation of the deed of subdivision and final subdivision plat or, in the case of a condominium, the recorded condominium declaration and before the first ADU in the development is offered for sale. A copy of the recorded deed of subdivision plat and ADU Covenants must be provided to HCD within 10 days of recordation. Deeds that accomplish individual sales must reference the already recorded Covenants document in the deed.

In a rental development the Covenants describe the property subject to the Zoning Ordinance requirements as well as the units subject to the ADU controls and the controls on the initial rental as well as subsequent rentals and occupancy of the ADUs. The Zoning Ordinance requires that Covenants be recorded prior to the issuance of the first Residential Use Permit (RUP) for any unit in the development. In practice, it must be recorded before the first ADU is offered for rent (which may occur earlier than the issuance of the first RUP). Since the control period under the Declaration of Covenants does not begin until the first RUP for an ADU is issued, a rider to the Covenants, specifying the date the RUP is issued, must be filed when this occurs to establish the start of the control period.

Section 2-812 of the Zoning Ordinance contains additional information about ADU Covenants.

D. Notification of Availability of ADUs

Section 2-810 and Section 2-812 of the Zoning Ordinance provide that at any time after the issuance of a building permit for an ADU (or permits for a group of ADUs), the owner may send a notice to the FCRHA advising that this particular ADU (or group of ADUs) is now or will be completed and ready for sale or rental. In practice, in order to begin the process of offering ADUs for sale or for rent, other conditions must also be met. To offer ADUs for sale, the Declaration of Covenants must be recorded and the sales prices must be approved by the County Executive. To offer ADUs for rent, the Declaration of Covenants must be recorded and the rents must be approved. For rental developments, the Ordinance also requires that the Notice of Availability be submitted and executed before any RUPs for the development can be issued.

The Notice of Availability shall be in a form prescribed by the FCRHA and must identify each unit being offered and its number of bedrooms, floor area, amenities and accessibility features as well as the approved sales price or rent. In addition, the notice shall include marketing materials for the unit and the development. The Notice shall be submitted by the owner to the ADU Development Coordinator in HCD on behalf of the FCRHA, at 3700 Pender Drive, Suite 300, Fairfax, Virginia, 22030-6039. HCD has developed a standard Notice of Availability and Offering Agreement for sales ADUs and one for rental ADUs, which will be provided to the owner for submission of such information. The Notice will not be considered complete and effective and the time periods concerning initial marketing in Sections 2-810 and 2-811 of the Zoning Ordinance will not begin until all information required to determine compliance with the specifications for ADUs, approval of sales prices or rents, recordation of the Declaration of Covenants and issuance of building permits has been received and the agreement has been executed by HCD on behalf of the FCRHA.

Section 3

Procedures for Sales of ADUs

A. Application and Certification of Eligible Purchasers

1. Application

Those seeking to purchase an ADU must apply to HCD for placement on the eligibility list maintained by HCD. In accordance with Section 2-801 of the Zoning Ordinance, the FCRHA has established income criteria for individuals and households seeking to purchase an Affordable Dwelling Unit. In order to become eligible under this program and to purchase an ADU, an interested individual or household must have an income that is seventy (70) percent or less of the median income for the Washington Standard Metropolitan Statistical Area as stated in the Zoning Ordinance in Section 2-801- Purpose and Intent. Individuals and households are required to show proof that they have at least the minimum annual income and assets necessary to be eligible under the program to purchase an available ADU, as set forth by the FCRHA in revised eligibility requirements approved on October 27, 2005. This minimum limit is reviewed and revised periodically by the FCRHA. Interested individuals or households must also satisfy other criteria established by the FCRHA and described below. It is the responsibility of the individual or household to demonstrate eligibility under the requirements of the ADU Program. In order to verify that an individual or household satisfies these requirements, HCD may request information and documentation that is appropriate including but not limited to copies of Federal and State Income Tax Returns, W-2 forms and copies of the most recent pay checks or pay statement.

An individual or household determined to be eligible is placed on the eligibility list and issued a non-transferable Certificate of Qualification (Certificate) valid for one year. This Certificate is used to demonstrate eligibility for the purchase of available ADUs.

Eligibility by an applicant to receive a Certificate of Qualification requires the individual or household must show proof of satisfying the following requirements:

- Individual or household applicants are first-time homebuyers. This means they may not presently own residential property nor have owned such property within the last three years in the United States or elsewhere in the world, with the following exceptions:

(A) any individual who is a displaced homemaker may not be excluded on the basis that the individual, while a homemaker, owned a home with his or her spouse, or resided in a home

owned by the spouse, A displaced homemaker is defined as an individual who (1) is an adult; (2) has not worked full-time, full-year in the labor force for a number of years but has, during such years, worked primarily without remuneration to care for the home and family; and (3) is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

(B) any individual who is a single parent may not be excluded on the basis that the individual, while married, owned a home with his or her spouse or resided in a home owned by the spouse. The term “single parent” means an individual who is unmarried or legally separated from a spouse; and has one (1) or more minor children for whom the individual has custody or joint custody; or is pregnant.

(C) Seniors (only household members 55 or over) who are purchasing in age-restricted communities may have owned a home within the past three years but have no present ownership in a home.

Owners of a subsidized cooperative will be considered as first-time homebuyers. If a member's contribution to cooperative expenses is based upon the member's income, an individual who owns shares in a cooperative will be considered a first-time homebuyer.

Regardless of status, no current owner of residential property may apply or purchase an ADU unit.

- Applicant individual or household meets minimum and maximum income requirements. Minimum income is the minimum amount of household income plus assets necessary to purchase an available ADU offered in the program. An exception to the minimum income requirement may be made for senior households (households with a member 55 or over and no household members under 18 who purchase in age-restricted communities) purchasing ADUs in active adult communities who provide verification from a lender that they are pre-approved for the purchase price of an ADU they wish to purchase and meet all other program eligibility requirements. The minimum income is established and published periodically by the FCRHA. The maximum income is seventy (70) percent of the median income for the Washington Standard Metropolitan Statistical Area adjusted for household size. A schedule of maximum income limits by household size is issued by the FCRHA and is updated from time to time. Income eligibility will be determined by a FCRHA preferred lender that verifies gross applicant household income and assets by family size.

- Applicant individual or household has a conditional pre-approval letter from a preferred lender that provides verification of household income/assets, stable employment and a satisfactory credit rating to sustain payment on an approved loan amount. The approved loan amount and family size will determine which offerings a family can apply for once they obtain the Certificate of Qualification.
- Applicants have completed a Certified Homeownership Counseling class approved by HCD.

Preferred lenders are lenders approved by the FCRHA to qualify applicants for a mortgage loan to purchase an ADU. Periodically, the FCRHA will issue a Request for Proposals to lenders to allow HCD to evaluate the qualifications of lenders and add lenders to this preferred lender list. HCD will renew Certificates on an annual basis automatically to those persons who can demonstrate eligibility under the income limits and requirements in effect at the time of renewal.

2. Income Limits

Applicants must show proof that total household income is at least the minimum income and does not exceed maximum income limits required to purchase an ADU. An exception to the minimum income requirement can be made for senior households approved to purchase only in age-restricted communities if their household financial situation (including, but not limited to assets and income and liabilities) indicates they can afford the unit. The maximum and minimum permitted income will be determined from the gross income received annually from all sources by all wage earners over 18 years of age (who are not full time students) in a family or household unit. A head of household or spouse who is a full-time student will always have their wages considered in determining household income.

Sources of income considered in determining eligibility include, but are not necessarily limited to the following:

1. wages and salary (full and part-time employment)
2. child support
3. alimony
4. interest on savings and checking accounts
5. dividends from stocks, bonds, and certificates of deposit
6. Social Security benefits
7. VA benefits
8. overtime, commissions/tips and bonus payments
9. unemployment insurance
10. pension/retirement payment
11. disability benefits

12. any other annuities or stipends received
13. income from real estate investments
14. income from a business or partnership owned, associated with or initiated by a member of the household.
15. regular gifts or contributions from persons not residing in the dwelling as long as there is a documented two year history.
16. net income from business operations, exclusive of amortization of capital indebtedness. Depreciation based on straight line method is an acceptable expense. Three years federal tax returns are required to document such income

3. Priority Points in the Selection Process for an ADU

The selection process uses priority points to determine placement of qualified applicants on the selection list for each offering. These priority points are verified by HCD staff and given to qualifying households at the time a household receives their Certificate of Qualification and are disclosed on the actual Certificate.

Points are awarded based on the following guidelines:

Live and/or work in Fairfax County	5 Points
Households who have at least one dependent child under age 18 (or disabled dependent-note a spouse can never be considered a dependent)	1 Point
Length of time in program – 1 point for each year of uninterrupted time in program with a maximum of 3 points	1-3 Points

The maximum number of priority points that a household can have is 9 points.

Households with a Certificate of Qualification will be eligible to apply to purchase an ADU. All Certificate holders will be notified by HCD of the availability of units with sufficient bedrooms to satisfy their needs. The following guidelines will be used to determine whether a unit is appropriate for a household applying to purchase an ADU.

Unit Size	Household Size
One Bedroom	2 Persons or Less
Two Bedroom	2 or more persons
Three Bedroom	3 or more persons
Four Bedroom	4 or more persons
Five Bedroom	5 or more persons

Note: Household size is subject to certain restrictions in the Zoning Ordinance and Virginia Uniform Statewide Building Code.

Additionally only households with a conditional pre-approval to purchase a home in the price range of the offering agreement will be allowed to apply for the offering.

4. Screening Preferences

Screening preferences may effect a household's placement in the selection process. Special screening preferences are referenced in the Notice of Availability and ADU Sales Offering Agreement, submitted by the owner and executed by the Redevelopment and Housing Authority.

The screening preferences are applicable in the following order of preference. When both preferences exist in an offering agreement, then the applicant with both preferences receives a higher preference than an applicant with only one preference.

- Applicant households who live in a Conservation or Redevelopment Area whose household size is appropriate for an ADU that has been identified in the Notice of Availability as being located in the designated Conservation or Redevelopment Area;
- Applicant households having one or more handicapped/disabled persons, as defined by the FCRHA and who request the preference. These applicant households will receive a preference to purchase ADU's that have been built to incorporate accessibility features that make such ADU's eligible for such a preference.

The accessibility features that must be included in an ADU unit eligible for such a preference are:

- Public use and common use portions of such dwellings be readily accessible to and usable by handicapped persons;
- All the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by handicapped persons in wheelchairs; and
- All premises within such dwellings contain the following features of adaptive design;
 - an accessible route into and through the dwelling;
 - light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;
 - reinforcements in bathroom walls to allow later installation of grab bars; and
 - usable kitchen and bathrooms such that an individual in a wheelchair can maneuver about the space.

The definition of a person with a handicap/disability for the purposes of this preference is a person having a physical impairment and/or traumatic brain injury that is expected to be of a long, continuing and indefinite duration that substantially impedes his or her ability to live independently without a residence with accessibility features provided in accordance with the standards above.

When one or both of these preferences apply, applications will be divided into preference categories first. Then, within each preference category, applicants will be ranked depending on the priority points they have been certified to receive on their Certificate. Within each preference category, households with the same number of priority points will be ordered through a random selection process similar to a lottery. For example, all households with nine points within a preference category will be randomly selected and then all households with eight points will be randomly selected and so forth.

B. Sales Price Limits for ADUs

In accordance with Section 2-810 of the Zoning Ordinance, the sales prices for housing constructed as a requirement of the ADU Program must not exceed the applicable maximum sales price limits established by the County Executive.

Sales prices include all fixtures and equipment required by ADU specifications. Sales prices also include provisions for builder-paid permanent mortgage placement costs and buy-down fees, certain closing costs and a marketing allowance. Any upgrades to the unit must be within the bounds of the established ADU specifications.

In addition to the maximum sales price calculated pursuant to the ADU Program, the final contract price for an ADU may also include pre-paid expenses such as lenders title insurance, pre-paid interest, etc. provided that the developer certifies that such charges have been paid from the seller's proceeds at settlement and provides documentation for the charges incurred.

C. FCRHA Right to Purchase ADUs

In accordance with Section 2-810 of the Zoning Ordinance, the FCRHA (which for purposes herein, pertaining to acquisitions of ADUs by the FCRHA, shall include a partnership in which the FCRHA is the managing general partner) shall have an exclusive right to purchase up to one-third (1/3) of the for-sale ADUs within a development for a 90-day period beginning on the date that a complete Notice of Availability and ADU Sales Offering Agreement, submitted by the owner, is executed by the Redevelopment and Housing Authority. The notice shall advise the FCRHA that a particular Affordable Dwelling Unit or Units are or will be completed and ready for purchase. The notice shall be in a form prescribed by the FCRHA and include specific identification of the unit or units being offered, the number of bedrooms, floor area and amenities for each unit, the approved sales price for each unit and evidence of issuance of a building permit for the units. Guidelines, approved by the FCRHA, will be used by HCD to

determine which units to purchase and under what program the units will be placed. The same guidelines will be used to determine whether the FCRHA will purchase up to 1/2 of the balance of the ADUs (i.e., up to another 1/3 of the ADUs) available after the first 30 days of the 90-day initial marketing period.

HCD will notify the owner in writing within 30 days, if possible, but no later than 90 days as described above, whether the FCRHA elects to purchase any or all of the ADUs which it has the right to purchase in the development. Cash closing shall occur within 30 days from the end of the ninety (90) day period, provided a RUP (Residential Use Permit) has been issued for the unit(s) prior to closing.

D. Sale of ADUs to Eligible Purchasers with Certificates of Qualification

In accordance with Section 2–810 of the Zoning Ordinance, the other 2/3 of the for-sale ADUs within a development shall be offered for sale for a 90-day period following execution of a Notice of Availability to persons who meet the income criteria established by the FCRHA and who have been issued a Certificate, but not to the general public. In addition, any units made available to the FCRHA, which it elects not to purchase, shall be offered exclusively to persons who have been issued a Certificate for the period beginning when the FCRHA notifies the owner that it will not exercise its right to purchase until the date 90 days after execution of the Notice of Availability.

When HCD receives an executed Notice of Availability the opportunity to purchase an ADU during this initial 90-day period is limited to Certificate holders in the First-Time Homebuyers Program, who meet all of the qualification criteria.

It will be the responsibility of the owner to contact the Certificate holders in order of which their names are drawn to schedule negotiations for the purchase of an ADU. Those Certificate holders selected have the exclusive right to enter into a contract for the purchase of an ADU until the date of public marketing (end of the 90-day period).

The owner will have the purchaser sign a sales contract with the ADU Program Rider to Residential Contract of Sale provided by the HCD staff and approved by the County Attorney. This rider provides the deed provision text and the Statement of ADU Covenant Provisions, both of which will be included in the Deed conveying the property to the purchaser. By signing the rider, the purchaser and the seller acknowledge that they have read the deed provision text and the Statement of ADU Covenant Provisions that encompass the Zoning Ordinance provisions as of September 13, 2004 as they apply to the sale of the ADU unit.

As soon as a Certificate holder has signed a contract to purchase a unit, the owner will submit a copy of the sales contract, with the attached ADU Program Rider to Residential Contract of Sale, to HCD. Within 10 days after settlement, the settlement agent will submit a copy of the signed settlement sheet (HUD-1),

and the original Certificate to the Homeownership Branch, Department of Housing and Community Development.

E. Purchase of ADUs by Eligible Non-Profits

In accordance with Section 2-810 of the Zoning Ordinance, after 60 days from the effective date of the Notification of Availability/Offering Agreement, ADUs which have not been placed under contract by the Certificate holders and ADUs made available to the FCRHA, which it elects not to purchase, will be offered for sale to non-profit housing groups, as designated by the County Executive. A list of eligible non-profit organizations has been established by the County Executive and is provided to owners. Purchases by non-profit housing groups are subject to the established ADU sales prices and the other requirements of the ADU Program.

The owner shall give the designated non-profit groups written notice, sent by certified or registered mail, that a particular ADU is or will be ready to purchase. The owner shall send a copy of this notification to HCD concurrently with his/her notification to the non-profits. Notification to the non-profit groups should be sent immediately after the 60th day of the offering period referenced above. The non-profit groups shall have 30 days within which to commit to purchase the units beginning on the date of receipt of the written Notice of Availability. If a non-profit housing group elects to purchase a particular ADU, it shall notify the owner in writing. An all cash closing shall occur within 30 days from the end of the 30-day period allowed for commitment to purchase, provided a residential use permit has been issued for the unit prior to closing. The non-profit shall notify HCD when closing occurs for the unit. HCD will provide to the non-profit a copy of the ADU Program Rider to Residential Contract of Sale that must be executed with the sales contract.

F. Sale of ADUs to the General Public

In accordance with Section 2-810 of the Zoning Ordinance, after the expiration of the time periods established in the ADU Program for purchase of ADUs by the FCRHA, by designated non-profit housing groups and by Certificate holders, ADUs which have not been sold to such purchasers may be offered for sale to the general public subject to the established sales prices for these ADUs as well as the income limits and all other requirements of the ADU Program. Alternately, the owner may offer such units for rent at the allowed rents for such units and subject to the income limits for eligible renters and other requirements of the ADU Program.

The owner shall notify HCD whether the units have been sold or rented and shall provide appropriate documentation of compliance with the requirements of the ADU Program. This documentation shall include income information as is required from Certificate holders eligible to purchase or eligible renters, evidence of the sales price (signed settlement sheet) or rent, if the ADU is rented, and a copy of the recorded Covenants for the individual unit.

G. Sale Under Other Affordable Housing Programs

Pursuant to Section 2-816 of the Zoning Ordinance, ADUs developed utilizing federal, state or local programs which are subject to terms and restrictions equivalent to the ADU program shall be sold at prices determined in accordance with the rules and regulations of such programs (provided these sales prices shall not exceed those set pursuant to the Zoning Ordinance) and shall be marketed in accordance with the rules and regulations of such programs.

H. Occupancy Requirements

Purchasers must occupy the unit as their primary place of residence and must annually sign and have notarized an affidavit (in a form specified by HCD on behalf of the FCRHA) certifying to their occupancy of the unit. Affidavits must be submitted to the FCRHA, in care of HCD, by June 1 of each year. Failure to submit an executed affidavit or submission of a false affidavit will subject the purchaser to penalties as provided in Section 2-817 of the Zoning Ordinance.

I. Control Period and Covenants

For ADU's for which the initial sale occurred prior to March 31, 1998, the price of subsequent resales shall be controlled for a period of fifty (50) years after the initial sale for each individual unit unless modified by recorded revised Covenants.

All controls and requirements pertaining to the original or subsequent sales of ADUs initially sold on or after March 31, 1998 and before February 28, 2006, are effective for a period of fifteen (15) years from the date of the initial sales transaction for an ADU.

For ADUs for which the initial sale occurred on or after February 28, 2006, the price control period for the initial sale shall be thirty (30) years. For any subsequent re-sales or transfer during the initial thirty (30) year control period, the price control period shall be controlled for a new thirty (30) year period, starting on the date of re-sale or transfer. Control periods shall be similarly renewable during any control period generated by a re-sale or transfer.

Prior to the July 1, 2002, Zoning Ordinance amendment, and at the time of the initial sale of an individual ADU, the owner was required to provide Covenants for each individual unit and the Covenants included the provisions specified in Section 2-812(2) of the Zoning Ordinance. On or after July 2, 2002, simultaneously with, and immediately following, recordation of the deed of subdivision and final subdivision plat, the ADU Covenants in the form prescribed by the FCRHA shall be recorded by the developer. Provisions specified in Section 2-812(2) of the Zoning Ordinance shall be included in the deed.

All such initial and any subsequent or revised Affordable Dwelling Unit Program Covenants thereafter recorded shall expressly provide all of the following:

1. The dwelling unit may not be resold during any applicable control period for an amount that exceeds the limits set by the County Executive and, prior to offering the dwelling unit for sale, the sales price shall be approved by the Department of Housing and Community Development.
2. Each time the unit may be offered for resale during any applicable control period, it shall first be offered exclusively through the Fairfax County Redevelopment and Housing Authority for sixty (60) days.
3. For the initial sale of the affordable dwelling unit after the expiration of any control period, it shall first be offered exclusively to the Fairfax County Redevelopment and Housing Authority for sixty (60) days. In all instances, one-half (1/2) of the difference between the net sales price paid by the purchaser at such sale and the owner's purchase price shall be contributed to the Housing Trust Fund to promote housing affordability in Fairfax County.
4. The unit is subject to the provisions of the Affordable Dwelling Unit Program as set forth in the Fairfax County Zoning Ordinance.
5. For the initial and revised Covenants recorded on or before July 1, 2002:
 - (a) The Covenants shall be senior to all instruments securing permanent financing, and that the Covenants shall be binding upon all assignees, mortgagees, purchasers and other successors in interest. However, the Covenants shall provide that, in the event of foreclosure, the Covenants shall be released.
 - (b) The Covenants shall state that any or all financing documents shall require the lender to provide to the County Executive and the Fairfax County Redevelopment and Housing Authority written notice of any delinquency or other event of default under a mortgage and that the Fairfax County Redevelopment and Housing Authority shall have the right for a sixty (60) day period to cure such a default.
6. For any individual Affordable Dwelling Unit initially conveyed between July 2, 2002 and February 28, 2006, and the resale of any individual affordable dwelling unit conveyed between July 2, 2002, and February 28, 2006, regardless of whether the Covenants applicable to any such initial conveyance or resale conveyance were recorded on or prior to July 1, 2002, and for initial and revised Covenants recorded between July 2, 2002 and February 28, 2006:
 - (a) The Covenants shall be senior to all instruments securing financing,

and the Covenants shall be binding upon all assignees, mortgagees, purchasers and other successors in interest, except that the Covenants shall be released in the event of foreclosure by an Eligible Lender.

- (b) The Covenants shall state that all financing documents shall require every Eligible Lender and every other lender secured by an individual for sale affordable dwelling unit to provide to the County Executive and the Fairfax County Redevelopment and Housing Authority written notice of any delinquency or other event of default under the deed of trust or mortgage and that the Fairfax County Redevelopment and Housing Authority shall have the right to cure such delinquency or other event of default within a period of ninety (90) days immediately after receipt by the Fairfax County Redevelopment and Housing Authority of such notice.
- (c) No sale, transfer or foreclosure shall affect the validity of the Covenants except as expressly set forth in the provisions of the Affordable Dwelling Unit Program as set forth in the Fairfax County Zoning Ordinance.
- (d) Each Eligible Lender and any other lender secured by an interest in the affordable dwelling unit shall be required prior to foreclosure to provide the County Executive and the Fairfax County Redevelopment and Housing Authority at least ninety (90) days prior written notice thereof.
- (e) The Covenants shall state that the unit is subject to all of the provisions set forth in Section 2-812(8)(B) of the Zoning Ordinance and shall state those provisions.
- (f) The total aggregate amount of principal and accrued interest for all financing secured by an individual for sale Affordable Dwelling Units shall not exceed the owner's purchase price. Any financing in excess of the owner's purchase price shall not be secured by any interest in the applicable individual for sale Affordable Dwelling Unit.

At the time of the initial sale of an individual Affordable Dwelling Unit, which sale occurs on or after March 31, 1998, the owner/applicant shall provide in the sales contract for each Affordable Dwelling Unit offered for sale a copy of the recorded Covenants running with the land in favor of the Redevelopment and Housing Authority. The owner/applicant shall include in the deed for each Affordable Dwelling Unit sold an express statement that the Affordable Dwelling Unit is subject to the terms and conditions of the Affordable Dwelling Unit Program Covenants recorded pursuant to this Part with a specific reference to the deed book and page where such Covenants are recorded. At the time of the initial sale and any resale of an individual Affordable Dwelling Unit, which sale or resale occurs on or after July 2, 2002, the owner/applicant shall also include in the deed

for each Affordable Dwelling Unit sold an express statement that the total aggregate amount of indebtedness that may be secured by the Affordable Dwelling Unit is limited and that other terms and conditions apply, including, but not limited to, a right for the Fairfax County Redevelopment and Housing Authority or a non-profit agency designated by the County Executive to acquire the Affordable Dwelling Unit on certain terms in the event of a pending foreclosure sale, as set forth in the Affordable Dwelling Unit Program Covenants and/or in the Affordable Dwelling Unit Program set forth in the Fairfax County Zoning Ordinance, as it may be amended.

For individual affordable dwelling units conveyed prior to 12:01 AM March 31, 1998, the owner may modify the existing covenant recorded with such conveyance by recording a revised covenant in the form prescribed by the Redevelopment and Housing Authority. If the recordation of such modified covenant occurs prior to February 28, 2006, the fifteen (15) year control period with respect to for sale units and the twenty (20) year control period with respect to rental units shall be deemed to have commenced on March 31, 1998. If the recordation of such modified covenant occurs on or after February 28, 2006, the renewable sales price control period of thirty (30) years shall apply with respect to for sale units and the thirty (30) year renewable control period with respect to rental units shall apply and shall be deemed to have commenced on March 31, 1998. Any revised covenants hereafter recorded that reduce the control period from fifty (50) years shall expressly provide that the terms and conditions of other previously recorded covenants shall continue to apply, as amended to provide that the terms thereof shall set forth terms and conditions in accordance with the terms herein. Specifically, for for-sale ADUs, the terms and conditions of the amended covenants shall conform to those provided for in Section 2-812, Paragraph 2.G.

J. Notice of Equity Interest

The FCRHA may record in the land records of Fairfax County for all ADU's with covenants recorded in the land records as required under Section 2-812, Covenant, Price and Financing Control of Affordable Dwelling Units, notice of equity interest to be contributed to the Fairfax County Housing Trust Fund with the first sale that occurs during the extended control period as defined in the Covenant.

K. Financing

The financing of Affordable Dwelling Units provided pursuant to Article 2, Part 8 of the Zoning Ordinance shall comply with the following:

1. For initial and revised Covenants recorded before July 2, 2002:
 - (a) The Covenants shall be senior to all instruments securing permanent financing, and the Covenants shall be binding upon all

assignees, mortgagees, purchasers and other successors in interest. However, the Covenants shall provide that, in the event of foreclosure, the Covenants shall be released.

- (b) The Covenants shall state that all financing documents shall require the lender to provide to the County Executive and the Fairfax County Redevelopment and Housing Authority written notice of any delinquency or other event of default under a mortgage and the Fairfax County Redevelopment and Housing Authority shall have the right for a sixty (60) day period to cure such a default.
 - (c) Any and all financing documents shall provide that, in the event of foreclosure of projects and units subject to the requirements of this Part that are comprised of for sale dwelling units, the lender shall give written notice to the Fairfax County Redevelopment and Housing Authority of the foreclosure sale at least thirty (30) days prior thereto and in the case of individual for sale affordable dwelling units, the Fairfax County Redevelopment and Housing Authority shall have the right to cure the default.
- 2. For any individual Affordable Dwelling Unit initially conveyed between July 2, 2002 and February 28, 2006 or the resale of any individual affordable dwelling unit conveyed between July 2, 2002 and February 28, 2006, regardless of whether the Covenants applicable to any such initial conveyance or resale conveyance were recorded between July 1, 2002 and February 28, 2006, and for initial and revised Covenants recorded between July 2, 2002 and February 28, 2006:
 - (a) The Covenants shall be senior to all instruments securing financing, and the Covenants shall be binding upon all assignees, mortgagees, purchasers and other successors in interest, except that the covenant shall be released in the event of foreclosure by an Eligible Lender.
 - (b) All financing documents shall require every Eligible Lender and every other lender secured by an individual for sale affordable dwelling unit to provide to the County Executive and the Fairfax County Redevelopment and Housing Authority written notice of any delinquency or other event of default under the deed of trust or mortgage and that the Fairfax County Redevelopment and Housing Authority shall have the right to cure such delinquency or other event of default within a period of 90 days immediately after receipt by the FCRHA.
 - (c) No sale, transfer or foreclosure shall affect the validity of the Covenants except as expressly set forth in the provisions of the Affordable Dwelling Unit Program part of the Zoning Ordinance.

- (d) The total aggregate amount of principal and accrued interest for all financing secured by an individual for sale affordable dwelling unit shall not exceed the owner's purchase price. Any financing in excess of the owner's purchase price shall not be secured by any interest in the applicable individual for sale affordable dwelling unit.
- (e) An Eligible Lender is defined as an institutional lender holding a first priority purchase money deed of trust on an individual for sale affordable dwelling unit or a refinancing of such institutionally financed purchase money deed of trust by an institutional lender, provided that such refinancing does not exceed the outstanding principal balance of the existing purchase money first trust indebtedness on the unit at the time of refinancing. An Eligible Lender shall have the right to foreclose on an affordable dwelling unit and the Covenants on affordable dwelling unit shall terminate upon such foreclosure by the Eligible Lender in the event that the affordable dwelling unit is sold by a trustee on behalf of the Eligible Lender to a bona fide purchaser for value at a foreclosure sale and all the requirements of the Affordable Dwelling Unit Program, the Covenants, and applicable regulations with respect to such foreclosure sale are satisfied. Such requirements include, but are not limited to, the Eligible Lender with respect to an individual for sale affordable dwelling unit having provided the County Executive and the Redevelopment and Housing Authority written notice of the foreclosure sale proposed and having provided the Right to Cure and the Right to Acquire.
- (f) Each Eligible Lender with respect to an individual for sale affordable dwelling unit shall also provide a right to cure any delinquency or default (Right to Cure), and a right to acquire an individual for sale affordable dwelling unit subject to the foreclosure notice given. The Right to Cure and/or the Right to Acquire, as applicable, may be exercised by the Fairfax County Redevelopment and Housing Authority, or by a non-profit agency designated by the County Executive in the event the Redevelopment and Housing Authority elects not to exercise its rights, at any time during such ninety (90) day period after the Redevelopment and Housing Authority has received notice of the delinquency or default or of the proposed foreclosure up to and including at such foreclosure sale. An affordable dwelling unit so acquired shall be acquired for the purpose of resale of such unit to persons qualified under the Affordable Dwelling Unit Program and not for conversion of the affordable dwelling unit to a rental unit. The Right to Acquire shall entitle the Redevelopment and Housing Authority or the non-profit agency designated by the County Executive to acquire the affordable dwelling unit at or before any foreclosure sale for which such notice has been given upon payment in full of the outstanding indebtedness on the affordable dwelling unit owed to the Eligible

Lender including principal, interest, and fees that together in the aggregate do not exceed the amount of the owner's purchase price, and other reasonable and customary costs and expenses (the Outstanding First Trust Debt), with no owner, prior owner or other party, whether secured or not, having any rights to compensation under such circumstances.

- (g) In the event that neither the Fairfax County Redevelopment and Housing Authority nor the non-profit agency designated by the County Executive exercises the Right to Acquire and the individual for sale affordable dwelling unit is sold for an amount greater than the Outstanding First Trust Debt, one-half (1/2) of the amount in excess of the Outstanding First Trust Debt shall be paid to the Fairfax County Housing Trust Fund to promote housing affordability in Fairfax County as part of the disbursement of settlement proceeds.
 - (h) Each Eligible Lender and any other lender secured by an interest in an individual for sale affordable dwelling unit shall be required prior to foreclosing to provide the County Executive and the Fairfax County Redevelopment and Housing Authority at least ninety (90) days prior written notice thereof.
 - (i) All financing documents for financing secured by an individual for sale affordable dwelling unit shall state that the Eligible Lender's financing provides the Right to Cure and Right to Acquire which may be exercised by the Fairfax County Redevelopment and Housing Authority, or by a non-profit agency designated by the County Executive in the event the Fairfax County Redevelopment and Housing Authority elects not to exercise its rights, at any time during such ninety (90) day period after the Fairfax County Redevelopment and Housing Authority has received notice, as applicable, of the delinquency or default or of the proposed foreclosure up to and including at such foreclosure sale.
3. For any individual affordable dwelling unit initially conveyed on or after February 28, 2006, the resale during the sales price control period of any individual affordable dwelling unit conveyed on or after February 28, 2006 and for the conversion of rental affordable dwelling units to condominiums on or after February 28, 2006, regardless of whether the covenants applicable to any such initial conveyance or resale conveyance were recorded prior to February 28, 2006, and for initial and revised covenants recorded on or after February 28, 2006:
- (a.) The covenants shall be senior to all instruments securing financing, and the covenants shall be binding upon all assignees, mortgagees, purchasers and other successors in interest, except that the covenants shall be released in the event of foreclosure by

an Eligible Lender, as such term is defined in Par. 8B of Section 2-812 of the Ordinance, as and only to the extent provided for in that paragraph.

- (b.) The covenants shall state that all financing documents shall require every Eligible Lender and every other lender secured by an individual for sale affordable dwelling unit to provide to the County Executive and the Fairfax County Redevelopment and Housing Authority written notice of any delinquency or other event of default under the deed of trust or mortgage and that the Fairfax County Redevelopment and Housing Authority shall have the right to cure such delinquency or other event of default within a period of ninety (90) days immediately after receipt by the FCRHA of such notice.
- (c.) No sale, transfer or foreclosure shall affect the validity of the covenants except as expressly set forth in the provisions of the Affordable Dwelling Unit Program as set forth in the Fairfax County Zoning Ordinance.
- (d.) Each Eligible Lender and any other lender secured by an interest in the affordable dwelling unit shall be required prior to foreclosure to provide the County Executive and the FCRHA at least ninety (90) days prior written notice thereof.
- (e.) The covenants shall state that the unit is subject to all of the provisions set forth in Par. 8B of Section 2-812 of the Ordinance and shall state those provisions.
- (f.) The total aggregate amount of principal and accrued interest for all financing secured by an individual for sale affordable dwelling units shall not exceed the owner's purchase price (as adjusted in accordance with Par. 4 of Section 2-812 of the Ordinance). Any financing in excess of the owner's purchase price (as adjusted in accordance with Par. 4 of Section 2-812 of the Ordinance) shall not be secured by any interest in the applicable individual for sale affordable dwelling unit.
- (g.) The covenants shall specifically state that upon any resale and/or transfer to a new owner of such affordable dwelling unit within the initial thirty (30) year control period, the prices for each subsequent resale and/or transfer to a new owner shall be controlled for a new thirty (30) year period commencing on the date of such resale or transfer of the affordable dwelling unit.

L. Resales of ADUs

1. Request for Resale Price Determination

In accordance with Section 2-812(2)(A) of the Zoning Ordinance, during the control period, an owner of an ADU must notify HCD in writing of the owner's intent to sell and request a resale price determination. The owner must provide HCD with receipts for any eligible items to be considered for credit in the price determination. If there are improvements to be included

in the sales price, the owner must permit HCD to inspect the improvements.

2. Establishment of Maximum Resale Price

The resale price will be determined by the original selling price plus a percentage of the unit's original selling price equal to the increase in the U.S. Department of Labor's Consumer Price-Urban Area Index or such other index selected by the County Executive (as designated in the regulations concerning sales prices for ADUs which have been issued by the County Executive) plus the lesser of the current fair market value of or the actual original cost of certain improvements as determined by the Fairfax County Redevelopment and Housing Authority in accordance with its regulations to be (a) substantial and appropriate replacements or improvements of existing housing components and/or (b) structural improvements made to the unit between the date of original sale and the date of resale. An allowance for payment of closing costs on behalf of the subsequent purchaser, which shall be paid by the seller, will also be added. Pre-paid items are not considered closing costs. Those features deemed to be substantial and appropriate replacements or improvements of housing components and structural components are set forth in a policy statement used by HCD staff and adopted by the FCRHA as part of these regulations in Addendum A.

Fair market value of structural improvements is defined as the actual and reasonable costs of materials, professional fees, contractors fees and permit fees associated with furnishing and installing the improvements. The fair market value of improvements does not include reimbursement for labor performed by the owner nor reimbursement for the purchase of tools and equipment used to install the improvements. Upgrades of existing house components, normal owner maintenance, and general repair work will be included in the resale price determination when they clearly add to the market value of the house or property. Value of the improvements will be determined by the remaining use of the improvement such as an appliance or as determined by the age and condition of the improvement such as carpet.

No increases in sales price shall be allowed for the payment of brokerage fees associated with the sales of the unit, except that with respect to units purchased and re-sold by the FCRHA, an increase of one and one half (1½) percent of the re-sale price shall be allowed for marketing and transaction costs, and with respect to re-sales by other owners, an increase of one and one-half (1½) percent of the sales price shall be allowed as a fee to be paid to a real estate broker or agent licensed to conduct residential real estate transactions in the Commonwealth of Virginia who meets the qualifications determined by the FCRHA and who serves as a dual agent for both the qualified buyer and the seller in the resale of the ADU under an agreement with the FCRHA and HCD.

The one and one-half (1½) percent fee shall be paid to such real estate broker or agent by the seller at the time of settlement of the resale of the ADU as part of the disbursement of settlement proceeds. The owner will be notified in writing of the approved resale price.

3. Offering an ADU for Resale

In accordance with Section 2-812(2)(A B) of the Zoning Ordinance, each time a unit is offered for sale during any price control period, it shall first be offered exclusively to the FCRHA. The owner of and ADU being re-sold shall provide the FCRHA with written notice by certified mail that the ADU is being offered for sale. The FCRHA shall have the exclusive right to purchase such ADU at a price not in excess of the control price established at the time of offering for re-sale as provided for in the Zoning Ordinance. The FCRHA shall notify the owner in writing within thirty (30) days advising whether or not it will purchase the unit, using the form approved by the FCRHA, and subject to conditions such as the condition of the title and the physical condition of the unit. An all-cash closing shall occur within ninety (90) days after the FCRHA receives the sale offer from the owner, in the event all such conditions of the contract are satisfied. The FCRHA may take title to the ADU and amend the covenants to make them consistent with the current provisions of the Zoning Ordinance, or may assign the contract to a qualified homebuyer, with the condition that the assignment include amended and restated covenants to renew the thirty (30) year control period and otherwise comply with the Zoning Ordinance. ADUs acquired by the FCRHA as the result of a re-sale shall be re-sold to qualified buyers who hold a Certificate of Qualification issued by the FCRHA. HCD will notify Certificate holders on the eligibility list of the availability of the resale unit. Only Certificate holders with the appropriate household size and income and assets as determined in their conditional pre-approval from a preferred lender will be able to apply through the selection process for the offering. The selection process for the resale offering will be conducted in the same manner specified for the initial sale of an ADU. HCD will issue a list of eligible purchasers by priority to the owner, and notify the Certificate holders of their positions on the list. It will be the responsibility of the owner to contact the Certificate holders on the list, in order, to obtain a purchaser.

If the unit has not been sold to an eligible applicant or to the FCRHA during the first 90 days the ADU is offered for resale, the ADU owner may offer the unit for sale to the general public, at the price previously determined by HCD, subject to the other requirements of the ADU Program, including income requirements and verification of income eligibility.

The seller must notify HCD whenever a sales contract is executed and forward a copy to HCD. The owner will have the purchaser also sign a

sales contract with the ADU Program Rider to Residential Contract of Sale provided by HCD and approved by the County Attorney. This rider provides the deed provision text and the Statement of ADU Covenant Provisions both of which will be included in the Deed conveying the property to the purchaser. By signing the rider, the purchaser and the seller acknowledge that they have read the deed provision text and the Statement of ADU Covenant Provisions that encompass the Zoning Ordinance provisions as of July 2, 2002, as they apply to the resale of the ADU. Purchasers of ADU re-sales will have to show proof of obtaining and paying for a home inspection from a certified home inspector who is a member of the American Society of Home Inspectors (ASHI) before settlement. The seller must also furnish HCD with an executed copy of the settlement sheet.

4. Sale Following Expiration of Control Period

In accordance with Section 2-812(2)(AC) of the Zoning Ordinance, for the initial sale of an ADU after the expiration of any control period, the FCRHA shall be offered the exclusive right to purchase the unit for sixty (60) days. The current owner of each such unit must provide the FCRHA with written notification by registered or certified mail that the unit is for sale. If the FCRHA elects to purchase the unit, it shall notify the owner within 30 days of the receipt of the owner's written notice of its intent to purchase and an all-cash closing shall occur within 60 days thereafter. If the FCRHA does not elect to purchase, the unit may be sold to any purchaser.

In all instances, whether or not the FCRHA purchases the unit, one-half (1/2) of the difference between the net sales price paid by the purchaser at such sale and the owner's original purchase price plus a percentage of the unit's selling price equal to the increase in the U.S. Department of Labor's Consumer Price-Urban Area Index, or such other index selected by the County Executive following consideration of the recommendation by the Affordable Dwelling Unit Advisory Board, plus the lesser of the current fair market value or the actual original cost of certain improvements as determined by the Fairfax County Redevelopment and Housing authority in accordance with its regulations to be (a) substantial and appropriate replacements or improvements of existing housing components and/or (b) structural improvements made to the unit between the date of original sale and the date of resale shall be contributed to the Housing Trust Fund to promote housing affordability in Fairfax County. Those features deemed to be substantial and appropriate replacements or improvements of housing components and structural components are set forth in a procedural manual used by HCD staff and adopted by the FCRHA as part of these regulations in Appendix A. Net sales shall exclude closing costs such as title charges, transfer charges, recording charges, commission fees, points and similar charges related to the closing of the sale of the property paid by the seller, but shall be inclusive of any allowances for items related to

the reconditioning and refurbishing of the dwelling unit, such as, but not limited to painting, carpet, appliances and similar allowances.

5. Portion of Sale Proceeds to the Fairfax County Housing Trust Fund in the Event of a Foreclosure Sale:

In the event of a foreclosure sale of any affordable dwelling unit after September 14, 2004, the following shares of the proceeds of such foreclosure sale shall be paid to the Fairfax County Housing Trust Fund to promote housing affordability in Fairfax County:

- A. For any individual affordable dwelling unit initially conveyed on or after July 2, 2002 and any individual affordable dwelling unit resold and conveyed on or after July 2, 2002, regardless of whether the covenants applicable to any such initial conveyance or resale conveyance were recorded prior to July 2, 2002, and for initial and revised covenants recorded on or after July 2, 2002, in the event that the individual for sale affordable dwelling unit is sold at the foreclosure sale for an amount greater than the Outstanding First Trust Debt, as such term is defined above, one-half (1/2) of the amount in excess of the Outstanding First Trust Debt shall be paid to the Fairfax County Housing Trust Fund as part of the disbursement of settlement proceeds.
- B. For all other individual affordable dwelling units, in all instances, one-half (1/2) of the amount of the difference between the net sales price paid by the purchaser at such sale and the foreclosed owner's purchase price plus a percentage of the unit's selling price equal to the increase in the U.S. Department of Labor's Consumer Price-Urban Area Index or such other index selected by the County Executive following consideration of the recommendation by the Affordable Dwelling Unit Advisory Board, plus the lesser of the current fair market value or the actual original cost of certain improvements as determined by the Redevelopment and Housing Authority in accordance with its regulations to be (1) substantial and appropriate replacements or improvements of existing housing components and/or (2) structural improvements made to the unit between the date of the foreclosed owner's purchase and the date of resale (the "Housing Trust Fund Share") shall be contributed to the Fairfax County Housing Trust Fund as part of the disbursement of settlement proceeds. Net sales price shall exclude closing costs such as title charges, transfer charges, recording charges, commission fees, points and similar charges related to the closing of the sale of the property paid by the seller. All amounts necessary to pay and satisfy any and all liens, judgments, deeds of trust, or other encumbrances on the unit, other than the equity interest of the Fairfax County Housing Trust Fund, shall be paid out of proceeds of the foreclosure sale that are not the Housing Trust Fund Share, as determined in accordance with this paragraph, or shall be otherwise paid by the foreclosed owner. In no event shall any such

amounts required to be paid by the foreclosed owner reduce the Housing Trust Fund Share, as determined in accordance with this paragraph, which is to be contributed to the Fairfax County Housing Trust Fund pursuant to this paragraph.

Section 4

Procedures for Rental of ADUs

A. Eligible Renters of ADUs

In accordance with Section 2-811(1) of the Zoning Ordinance, those seeking to rent an ADU must have an income no greater than the maximum income limits for the appropriate household size which are published periodically by the FCRHA. There are two levels of income limits which apply to rental ADUs. The lower limits apply to one-third of the rental ADUs in a multiple dwelling unit rental development and the higher limits apply to the balance of the rental ADUs in a multiple dwelling unit rental development and to all other rental ADUs. It is the responsibility of the individual or household to demonstrate eligibility under the requirements of the ADU program. In order to verify that an individual or household satisfies these requirements, appropriate information and documentation may be requested including but not limited to copies of Federal and State income tax returns, W-2 forms, and copies of pay checks. Income shall be defined in the same manner as described in Section 3 of these regulations concerning the sale of ADUs.

- The first priority in renting ADUs (whether through the FCRHA or directly from the owner) will be given to persons who live or work in Fairfax County. In addition, within this first priority, when an ADU rental unit is built to incorporate accessibility features at least equivalent to the features described below, applicant households that live or work in Fairfax County having one or more persons with a handicap/ disability, as defined below, who request it, shall have a preference to rent the ADU.
- The second priority in renting ADUs (whether through the FCRHA or directly from the owner) will be given to persons who do not live or work in Fairfax County. In addition, within this second priority when an ADU rental unit is built to incorporate accessibility features at least equivalent to the features described below, applicant households that do not live or work in Fairfax County having one or more persons with a handicap/ disability, as defined below, who request it, shall have a preference to rent the ADU.

The accessibility features that must be included in an ADU unit eligible for such a preference are:

- public use and common use portions of such dwellings be readily accessible to and usable by handicapped persons;
- all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by handicapped persons in wheelchairs; and
- all premises within such dwellings contain the following features of adaptive design;

- an accessible route into and through the dwelling;
- light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;
- reinforcements in bathroom walls to allow later installation of grab bars; and
- usable kitchen and bathrooms such that an individual in a wheelchair can maneuver about the space.

The definition of a person with a handicap/disability for the purposes of this preference is a person having a physical impairment and/or traumatic brain injury that is expected to be of a long, continuing and indefinite duration that substantially impedes his or her ability to live independently without a residence with accessibility features provided in accordance with the standards above.

Such a priority preference for handicapped/disabled persons shall apply to otherwise eligible individuals or households. The FCRHA will verify the eligibility of tenants in ADUs leased by the FCRHA and will verify only the income eligibility of potential tenants referred to multifamily rental ADUs. It is the landlord's responsibility to verify the eligibility of tenants in all other ADU rental units.

B. Allowed Rents for ADUs

In accordance with Section 2-811(5) of the Zoning Ordinance, the rents for housing constructed as a requirement of the ADU Program must not exceed the applicable maximum limits established periodically by the County Executive. Rents will be established for single family detached, single family attached and multiple family dwelling units with various numbers of bedrooms. Rents for multiple family units are exclusive of tenant-paid utility costs which may include any combination of the following: water, sewer, heat, light and/or general electric usage.

C. Initial Offering of ADUs for Rental

1. Single Family Detached and Attached Rental ADUs - FCRHA Option

In accordance with Section 2-811(1) of the Zoning Ordinance, upon receipt of notification from the owner that a particular single family detached or single family attached ADU is or will be available for rent, HCD will determine whether the FCRHA or its designee will lease up to 1/3 of such units in the development pursuant to its exclusive right to lease such units during the control period. Guidelines, approved by the FCRHA, will be used to determine which units to lease. HCD will notify the owner in writing within 30 days from receipt of the owner's notice, if the FCRHA elects to lease any units.

2. Multiple Family Rental ADUs - FCRHA Option

In accordance with Section 2-811(1) of the Zoning Ordinance, upon receipt of notification from the owner that a multiple family ADU is or will be available for rent, HCD (on behalf of the FCRHA) may refer to the owner potential tenants for the one-third of the ADUs to be rented at rents affordable to households with incomes up to 50% of the median income for the Washington, D.C., MSA, if there are applicants who could afford these units. These households will be certified as income eligible by HCD on behalf of the FCRHA. The owner will determine whether the household meets the owner's normal rental criteria other than income. Households may not be rejected for such units if they are receiving state or local rental subsidy assistance. If a qualifying tenant is not referred to the owner by the FCRHA, at the end of the 30 day period (or sooner if HCD indicates it has no potential tenants to refer) the owner may rent the unit to a household whose income does not exceed 50% of median income for the Washington, D.C., MSA at a rent affordable to such a household.

3. General Provisions for Rental ADUs

In accordance with Section 2-811(2) of the Zoning Ordinance, units not leased pursuant to the provisions of Paragraph 1 or 2 above shall be offered by the owner to persons who meet the income and other criteria established by the FCRHA. Priority will be given to those who live or work in Fairfax County. At the owner's option, the FCRHA may lease additional rental units at the ADU market rent as appropriate.

D. Occupancy of Rental ADUs

1. Tenants of rental ADUs must meet the eligibility criteria established by the FCRHA. In addition, the owner shall use the guidelines below to determine the household size appropriate for various size units:

Unit Size	Minimum Number of Persons	Maximum Number of Persons
Efficiency	1	1
One Bedroom	1	2
Two Bedroom	2	4
Three Bedroom	3	6

2. Renters of ADUs must occupy the unit as their domicile and must annually provide an executed affidavit (in a form specified by HCD on behalf of the FCRHA). Certifying their continuing occupancy of the unit. This affidavit shall be submitted by the renter by the date specified in their lease of the date specified by the landlord/owner.
3. If the renter of an ADU fails to provide an executed affidavit to their landlord/owner within thirty (30) days written request for such affidavit,

then the lease shall automatically terminate, become null and void and the renter must vacate the unit within thirty (30) days of written notice from the landlord/owner.

4. In the event a renter of an ADU shall no longer meet the eligibility criteria as a result of increased income or other factor, then at the end of the lease term, they must vacate the unit.
5. In the event a renter fails to occupy a unit for a period in excess of 60 days, unless approval was granted in writing by HCD on behalf of the FCRHA, the lease shall automatically terminate and the tenant must vacate the unit within 30 days of written notice from the landlord/owner.
6. Notwithstanding the provisions of paragraphs 3, 4 and 5 above, if the landlord/owner shall immediately designate an additional comparable unit as an ADU to be leased under the controlled rental price and the requirements of the ADU Program, the renter of such unit referenced in paragraphs 3, 4 and 5 above may continue to lease such unit at the market value rent.

E. Control Period and Covenants

1. General

In accordance with Section 2-812 of the Zoning Ordinance, for affordable dwelling units for which the initial rental occurred prior to March 31, 1998, the prices for subsequent re-rentals shall be controlled for a period of 50 years after the initial rental transaction for the respective affordable dwelling unit, provided that the control period may be amended to 20 years from March 31, 1998 and prior to February 28, 2006, upon recordation of revised Covenants.

For ADUs for which the initial rental occurred on or after February 28, 2006, all controls and requirements pertaining to the original or subsequent rentals of ADUs are effective for a period of thirty (30) years from the date of issuance of the first RUP for the required ADUs in the rental project.

In the case of a rental project having received zoning approval before February 26, 2006, where such approval includes a proffered condition or approved development plan that addresses ADUs, prior to offering ADUs for rent but no later than the issuance of the first RUP for a rental development which includes ADUs, the owner shall record Covenants running with the land in favor of the FCRHA. The Covenants shall subsequently have specified in it the date of issuance of the first RUP for an ADU and shall include the provisions specified in Section 2-812(6) of the Zoning Ordinance including restrictions on the rental of the ADUs during the 20 year control period. The Covenants shall be senior to all

instruments securing permanent financing and shall be binding on assignees, mortgagees, purchasers and other successors in interest. In the event of a bonafide foreclosure, the Covenants shall be released; however, the financing documents shall provide that the lender shall give the FCRHA at least 30 days prior written notice of the foreclosure sale.

In the case of a rental project that receives zoning approval on or after February 28, 2006, or received zoning approval before February 26, 2006, where such approval does not include a proffered condition or approved development plan that addresses ADUs, prior to offering ADUs for rent but no later than the issuance of the first RUP for a rental development which includes ADUs, the owner shall record Covenants running with the land in favor of the FCRHA. The Covenants shall subsequently have specified in it the date of issuance of the first RUP for an ADU and shall include the provisions of the Zoning Ordinance including restrictions on the rental of the ADUs during the thirty (30) year control period. The Covenants shall be senior to all instruments securing permanent financing and shall be binding on assignees, mortgagees, purchasers and other successors in interest.

For initial and revised covenants recorded before July 2, 2002, the covenants shall provide that in the event of a bona fide foreclosure, the Covenants shall be released; however, the financing documents shall provide that the lender shall give the FCRHA at least 30 days prior written notice of the foreclosure sale. For initial and revised covenants recorded between July 2, 2002 and February 27, 2006, the covenants shall terminate in the event of a foreclosure sale or a rental property by an eligible lender, as provided for in Section 2-818, paragraph 8.B.5. of the Zoning Ordinance. For initial and revised covenants recorded on or after February 28, 2006, the covenants shall remain in full force and effect in the event of the foreclosure sale of a rental project by an eligible lender, as provided for in Section 2-818, paragraph 8.B.5. of the Zoning Ordinance.

HCD will provide the owner with standard Covenants for rental ADUs to be recorded in the land records.

2. Multifamily Rental Developments

In accordance with Section 2-812(9) of the Zoning Ordinance, for multifamily rental developments that were initially rented before February 28, 2006, after the initial 10 years of the control period and after provision of 120 day written notice to the FCRHA and the tenants of the ADUs, the owner may elect to:

- a. file a rezoning application and comply with the requirements that result there from; or

- b. pay to the Fairfax County Housing Trust Fund an amount equivalent to the then fair market value of the land attributable to all bonus and affordable units and provide relocation assistance to the tenants of the ADUs in accordance with the requirements of Article 4 of Chapter 12 of the Code and, thereupon, the units previously controlled as ADUs shall be released fully from the controls.

For multiple family dwelling re-rentals that were initially rented on or after February 28, 2006, the 30 year control period shall apply and the above provision for an early release of the covenants after the initial ten (10) years shall not apply.

F. Lease Restrictions

1. Any rental ADU that is not leased by the FCRHA shall be leased for a minimum six (6) month period with a maximum lease term of one (1) year to tenants who meet the eligibility criteria.
2. The lease agreement for any such unit shall include the following provisions:
 - a. Minimum lease term is six (6) months and the maximum lease term is one (1) year.
 - b. The tenant must occupy the unit as their domicile.
 - c. Subleasing of the unit is prohibited
 - d. The tenant must continue to comply with the eligibility criteria.
 - e. The tenant must annually verify under oath, on a form approved by the FCRHA, that the tenant continues to meet the income and other eligibility criteria established by the FCRHA.
 - f. The lease will be terminated if there is any false certification or failure to provide the executed affidavit of continued occupancy or failure to occupy the unit for a period greater than 60 days unless such failure is approved in writing by HCD on behalf on the FCRHA.

G. Landlord/Owner Responsibilities

1. The landlord/owner of a development containing rental ADUs shall be responsible for obtaining from renters of affordable dwelling units (other than the FCRHA) an annual income certification that certifies the income eligibility of that household and other facts in order in insure the tenant continues to meet the eligibility criteria established by the FCRHA.
2. The landlord/owner will also be responsible for obtaining third party verification of income.

3. By the end of each month, the landlord/owner shall provide HCD (on behalf of the FCRHA) with a statement verified under oath which certifies the following as of the first of such month:
 - a. The address and name of the development and the name of the owner.
 - b. The number of affordable dwelling units by bedroom count, other than those leased to the FCRHA, which are vacant.
 - c. The number of affordable dwelling units by bedroom count which are leased to residents other than the FCRHA. For each unit the statement shall have the following information:
 1. The unit address and bedroom count.
 2. The tenant's name and household composition.
 3. The effective date of the lease.
 4. The tenant's household income as of the date of the lease.
 5. The current monthly rent.
 - d. That to the best of the owner's information and belief, the tenants who lease ADUs meet the eligibility criteria established by the FCRHA.
 - e. The owner shall provide the FCRHA with a copy of each new or revised annual tenant verification obtained from the renters of ADUs.

H. Rental Under Other Affordable Housing Programs

Pursuant to Section 2-816 of the Zoning Ordinance, ADUs developed using federal, state or local programs which are subject to terms and restrictions equivalent to the ADU program shall be rented at rents determined in accordance with the rules and regulations of such programs (provided that the rents do not exceed those set pursuant to the ADU program) and shall be marketed in accordance with the rules and regulations of such programs.

I. ADUs in Condominiums; Rental ADUs in Condominium Conversions

Pursuant to Section 2-807 of the Zoning Ordinance:

1. If a development is initially built as a condominium and such development is subject to the requirements of Chapter 2, Part 8 of the Fairfax County Zoning Ordinance, then the affordable dwelling units required pursuant to the Ordinance shall be specifically identified on the approved site plan, building plans and designated as part of the recorded condominium declaration.
2. If a development is initially built as a rental project under single ownership and such development was subject to the requirements of Chapter 2, Part 8 of the Ordinance and then should subsequently convert to a condominium, then:

- a. The provisions of Section 2-804 of Part 8 above shall apply to such condominium development.
- b. The ADUs required pursuant to Part 8 of the Ordinance shall be specifically identified by unit number as part of the recorded condominium declaration.
- c. The sales price for such affordable dwelling units being converted shall be established by the County Executive pursuant to Part 8 of the Ordinance. If the owner of such condominium conversion elects to renovate the affordable dwelling units, the Affordable Dwelling Unit Advisory Board shall consider the reasonable cost of labor and materials associated with such renovation, which costs shall be factored into the Advisory Board's recommendation to the County Executive respecting the permissible sales prices for such renovated affordable dwelling units.
- d. For any condominium conversion development for which an application for registration of a condominium conversion was filed with the Virginia Real Estate Commission pursuant to Sect. 55-79.89 of the Code of Virginia, as amended, after February 28, 2006, the affordable dwelling units may not be retained as rental units within a condominium conversion development if such units are also subject to condominium conversion. The term of sales price control for affordable dwelling units located within a condominium conversion development for which the initial sale of individual units occurred on or after February 28, 2006, shall be for a period of thirty (30) years and the units shall be priced in accordance with the provisions of Part 8 of Chapter 2 of the Ordinance. However, upon any resale and/or transfer to a new owner of such ADU within the initial thirty (30) year period of sales price control, the sales prices for each subsequent resale and/or transfer for each such ADU to a new owner shall be controlled for a new thirty (30) year period commencing on the date of such resale or transfer of the affordable dwelling unit. Each initial thirty (30) year control period and each subsequent thirty (30) year control period may be referred to as the renewable sale price control period or control period.
- e. For any condominium conversion development for which an application for registration of the condominium conversion was filed with the Virginia Real Estate Commission pursuant to Sect. 55-79.89 of the Code of Virginia, as amended, on or before February 28, 2006, the ADUs may be retained as rental units within the development. The condominium declaration and an amended covenant associated with the ADUs shall specifically set forth:
 - (1) The term of sales price control for ADUs located within a condominium conversion development for which the initial sale of individual units occurred before February 28, 2006, shall be for a period of twenty (20) years from the date of issuance of the first

Residential Use Permit for the ADUs required for the development.

- (2) All rental ADUs within the development shall be transferred to the same entity or individual.
- (3) The ADUs shall be rented in accordance with the rental provisions of the ADU Program, including but not limited to, pricing and monthly reporting, and no additional condominium or homeowner association fees shall be assessed to the tenants of the ADUs.
- (4) Parking for the ADUs shall be provided in accordance with the applicable provisions of the Zoning Ordinance with at least the minimum number of required spaces retained and made available for use by the affordable dwelling unit tenants.
- (5) The ADUs shall be provided in substantially the same bedroom mix as the market rate units in the development.
- (6) The tenants of the rental ADUs shall have access to all the site amenities that were provided when the ADUs were originally established in the development.
- (7) All other covenants set forth in the original covenants and all regulations set forth in the Zoning Ordinance shall remain in full force and effect.

- f. The rental tenant occupants of ADUs subject to the condominium conversion shall have the right to purchase the dwelling unit they occupy at the sales price established by the County Executive pursuant to Part 8 of Chapter 2 of the Ordinance. Subsequently, the FCRHA shall have the right to purchase any or all of the ADUs that are not purchased by such rental tenant occupants at the sales price established for such units by the County Executive pursuant to Part 8 of Chapter 2 of the Ordinance. Such units shall be offered to the FCRHA and purchased by it in accordance with the provisions of Par 2B of Sect. 2-812 of Part 8 of Chapter 2 of the Ordinance. To affect this, the owner shall notify the FCRHA prior to filing for condominium conversion, and request pricing for the ADUs subject to the condominium conversion. Such notice shall be submitted by the owner to the ADU Development Coordinator in HCD on behalf of the FCRHA, at 3700 Pender Drive, Suite 300, Fairfax, Virginia, 22030-6039. The County Executive shall establish the prices for such units, which will be included in the 120-day formal notice to tenants in the ADUs subject to the conversion. The tenants first right to purchase, as provided for in Title 55 of the Code of Virginia, shall be for the first sixty (60) days of the 120 day formal notice. Thereafter, as stated in Paragraph I(2)(f) above, the FCRHA shall have the exclusive right to purchase any or all of the units not

purchased by the rental tenants, at the sale price established by the County Executive.

ADDENDUM A

First-Time Homebuyers Program Approved Replacements and Improvements Resale Credit Policy

Purpose:

To provide a resale credit to increase the allowable sale price of ADU units by the lower of the actual original cost or value of major repairs or items which are required to make the unit safe, sanitary, energy efficient and saleable, while maintaining the price of the unit within the range of affordability for First-Time Homebuyers participants as referenced in Section Three of the Fairfax County Redevelopment and Housing Authority Administrative Regulations Concerning the Rental and Sale of Affordable Dwelling Units. Resale credit will only be given as set forth in HCD procedures.

1. All replacements and improvements are required to be performed or purchased from licensed contractors with a Class A or Class B contractor license to do business in the state of Virginia at the time that the work is completed. The owner must provide valid dated receipts. The item must be in the home at the time of the resale visit and at the time of settlement and occupancy by the new purchaser.
2. Owners seeking resale credit must provide proof that all applicable Fairfax County codes and Homeowners Association or Condominium Association restrictions and regulations are met.
3. No resale credit will be given for items that were paid for or reimbursed from other sources, such as insurance claims; for the cost of normal maintenance and upkeep; for removable fixtures such as ceiling fans; and no credit shall be given for upgrades to carpeting, cabinets, and appliances that were purchased at the time the unit was new.
4. No resale credit shall be given for the cost of normal maintenance and upkeep, including but not limited to items such as powerwashing, seasonal maintenance, landscaping, cleaning, or sealing any surface, for eradication of insects or other pests, for moving expenses, or the removal of trash or debris.
5. No resale credit shall be given for items installed or work done outside of the period of ownership of the owner seeking resale credit.
6. Resale credit will be given for the following items in accordance with HCD policies for Home Improvement Loan Programs (HILP) and First-Time Homebuyer programs:
 - A. Appliances: Resale credit shall be given for appliances that meet all of the following criteria:
 1. were purchased by the owner requesting credit;
 2. remain in the unit;
 3. are less than five years old; and
 4. are the same type and quality of appliance that came with the unit at the time of the original purchase.

Appliances include: range or cooktop and oven; refrigerator/freezer; dishwasher; hot water heater; garbage disposal. The credit shall be at the lower of the owner's actual cost or the HILP allowance for such items and shall be reduced by 20% per year. No owner shall receive resale credit for more than one of the same type of appliance.

- B. Permanent structural additions such as finished basements and added bathrooms. The credit for permanent improvements will be the lesser of the amount of the Fairfax County Department of Tax Assessment's established fair market value evaluation for the improvement or the owner's actual cost.
 - C. Decks, patios and fences less than ten (10) years old. The credit shall be at the owner's actual cost and shall be reduced by 10% per year.
 - D. Major structural repairs necessary to comply with state and local codes. The credit shall be at the lower of the owner's actual cost or the HILP allowance. The code violation must be documented by the contractor.
 - E. Minor structural repairs (windows, doors, walls) necessary to comply with state and local codes or necessary to maintain health and safety or improve energy efficiency shall receive resale credit at the owner's actual cost. The code violation or increase in safety or efficiency must be documented by the contractor.
 - F. Replacement of major HVAC system components necessary to comply with state and local codes, or necessary to maintain health and safety or improve energy efficiency. The resale credit shall be at the lower of the owner's actual cost or the HILP allowance for such items and shall be reduced by 10% per year.
 - G. Energy conservation improvements for the following items that remain with the property such as storm doors or windows, water saving improvements, weather stripping (as it relates to making other energy improvements), and additional insulation. The resale credit shall be at the lower of the owner's actual cost or the HILP allowance.
 - H. Major plumbing repairs necessary to meet state or local codes as documented by the plumbing contractor, or associated with approved permanent improvement such as an added bathroom. The resale credit shall be at the lower of the owner's actual cost or the HILP allowance.
 - I. Replacement of major roof components. The resale credit for all components shall be amortized over the period of manufacturer's or contractor's guarantee.
 - J. Exterior painting done within one (1) year of sale that remains in good condition at the time of the resale visit shall receive resale credit at the lower of the owner's actual cost or the HILP allowance per square foot.
 - K. Flooring installed within two (2) years of sale. The resale credit shall be at the lower of the cost or HILP allowance and shall be reduced by 50% per year.
7. The maximum total amount of resale credit for all replacements and improvements that will be allowed under this First-Time Homebuyers Program Approved Replacements and Improvement Resale Credit Policy for any home shall not increase the allowable resale price of the home to be in excess of

the maximum amount affordable to First-Time Homebuyers Program participants at the time of the resale offering of the unit.

ADDENDUM B

Fairfax County Zoning Ordinance Section 2-801 through Section 2-821:

Affordable Dwelling Unit Program

As amended by the Board of Supervisors, February 27, 2006
And effective February 28, 2006

For complete copy of Section 2-801 through Section 2-821 please copy and paste the
following into your browser:

<http://www.fairfaxcounty.gov/dpz/zoningordinance/articles/art02.pdf>